IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:26.11.2007

Coram:

The Honourable Mr. Justice V. DHANAPALAN

W.P. Nos.20679, 21834-21836, 25054, 25061, 25062, 24214-24216 & 21128/2007
and
M.P. Nos.2 & 3 in W.P. No.21128 of 2007
and
M.P. Nos.1 to 3 in all other writ petitions

G.A. Sridhar — Petitioner in W.P. No.20679 of 2007

A.V. Janarthanan — Petitioner in W.P. No.21834 of 2007

P. Pandurangan — Petitioner in W.P. No.21835 of 2007

G.S. Dhasaradan — Petitioner in W.P. No.21836 of 2007

G. Muthukrishnan — Petitioner in W.P. No.25054 of 2007

Kumara Venkateswaralu — Petitioner in W.P. No.25061 of 2007

P. Kailasam — Petitioner in W.P. No.25062 of 2007

T. Jayaraj — Petitioner in W.P. No.24214 of 2007

N. Srinivasan — Petitioner in W.P. No.24215 of 2007

K. Munusamy — Petitioner in W.P. No.24216 of 2007

1. A. Kishtappa Chetty
2. S. Vadivel
3. R. Perumal
4. A. Sadayappan
5. A. Venugopal
6. G. Murali Manohar
7. Shree Mangala Marines
   represented by its Proprietor
8. N. Krishnamurthy
9. B. Anandan
10. P.C. Manusamy
11. C. Vairamuthu — Petitioners in W.P. No.21128 of 2007

vs.

1 The Union of India
Secretary to Ministry of Industry and Commerce
Department of Industrial Policy and Promotion
New Delhi

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2 The Deputy Salt Commissioner
Office of the Deputy Salt Commissioner
Chennai - 600 006

3 NTPC Tamil Nadu Energy Company Limited
1, Village Road
Rashimi Towers, IV Floor
Nungambakkam, Chennai - 600 034

.. Respondents in W.P. Nos.20679, 21834 to 21836, 25054, 25061, 25062, 24214 to 24216 of 2007

1 The Deputy Salt Commissioner
Office of the Salt Commissioner
Government of India
Shastri Bhavan
26, Haddows Road
Chennai - 600 006

2 NTPC Tamil Nadu Energy Company Ltd.
Rashmi Towers, IV Floor
1, Village Road
Nungambakkam, Chennai - 600 034

3 Hindustan Petroleum Corporation Limited
Thalamuthu Natarajan Building
No.8, Gandhi Irwin Road
Egmore, Chennai - 600 008 Respondents in W.P. No.21128/2007

Prayer in W.P. Nos.20679, 21834 to 21836, 25054, 25061, 25062, 24214 to 24216 of 2007:

Writ Petitions filed under Article 226 of the Constitution of India seeking writs of certiorarified mandamus as stated therein, praying to calling for the records of the proceedings in C.No.11012/5/W/G1/04/Vol.II dt.3.5.07 on the file of the 2nd Respondent, quash the same.

Prayer in W.P. No.21128 of 2007

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus as stated therein, praying to directing the first respondent from dispossessing the petitiones from their respective salt manufacturing lands leased and to the petitioners by the first respondent situated at Vallur Salt Factory, Ponneri Taluk, Thiruvallur District except by due process of law.

For petitioners in
W.P. Nos.20679,
21834 to 21836,
25054, 25061,
25062, 24214-24216/2007 Mr. R. Subramanian, Sr. Counsel
for Mrs. S. Hemalatha

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For petitioner in
W.P. No.21128 of 2007 Mr. V. Sairam

For RR 1 & 2 in
20679, 21834 to 21836,
25054, 25061, 25062, 24214
to 24216 of 2007 Mr. V.T. Gopalan
and Addl. Solicitor General of India
For R1 in W.P. No.21128/2007 for Mr. T.S. Sivagnanam

For R3 in W.P. Nos.20679,
21834 to 21836, 25054, Mr. S. Vijayakumar
25061, 25062, 24214 to SCGSC
24216 of 2007 and
for R2 in W.P. No.21128/2007

For R3 in W.P. No.21128/2007 Mr. O.R. Santhanakrishnan

COMMON ORDER

Since the issue involved in all the above writ petitions is the same and the facts are also identical, these writ petitions are decided by a common order.

2. While W.P. No.21128 of 2007 has been filed seeking a writ of mandamus forbearing the first respondent from dispossessing the petitioners from their respective manufacturing lands situated at Vallur Salt Factory, Ponneri Taluk, Thiruvallur District, leased out to them by the first respondent, the other writ petitions have been filed seeking a writ of certiorari calling for the records of the proceedings dated 03.05.2007 on the file of the second respondent and to quash the same.

3. The facts which are necessary for deciding these writ petitions, are as under:

a. The Deputy Salt Commissioner of the Government of India (in short "the Deputy Commissioner") who is arrayed as one of the respondents in all these writ petitions, had initially given on lease, certain extent of lands to the petitioners under separate Lease Deeds on receipt of certain sums as assignment fee and ground rent for the purpose of manufacturing salt and the lease period of these lease deeds vary from petitioner to petitioner. The petitioners, by employing a large number of persons under various categories and by investing sums of Rs.7 lakhs each annually, have been manufacturing salt for about two decades.

b. While so, the Ministry of Industry and Commerce, Department of Industrial Policy and Promotion, New Delhi ("the Ministry" for short), vide its orders dated 09.04.2007 and 27.04.2007, had conveyed the approval of the Government of India to transfer the leased out lands to NTPC Tamil Nadu Energy Company

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Limited ("NTECL" for short) and Hindustan Petroleum Corporation Limited ("HPCL" for short) respectively. Citing these orders, the Deputy Commissioner had issued an order dated 03.05.2007 addressed to each of the petitioners proposing to take over the area leased out to them, subject to payment of a certain sum as compensation by NTECL / HPCL as the case may be. The Deputy Commissioner had also stated in the said order that the amount of compensation would be arrived at between the petitioners and NTECL/HPCL by way of mutual negotiations and the leased out lands would be taken over on receipt of confirmation from NTECL/HPCL stating that they have compensated the petitioners. The relevant portion of the impugned orders passed by the Deputy Commissioner runs as under:

> "Ministry of Industry and Commerce, Department of Industrial Policy and Promotion, New Delhi in their Orders No.04011/31/2000-Salt, dated 9.4.2007 and 04011/12/2006-Salt, dated 27.04.2007 have conveyed the approval of the Government of India to transfer the areas leased out to you to NTPC Tamil Nadu Energy Company Limited (NTECL) / Hindustan Petroleum Corporation Limited (HPCL). Therefore, it is proposed to take over an area of (may vary in each case) acres leased out to you under Vallur Salt Factory subject to payment of compensation which the NTECL/HPCL may arrive through mutual negotiations.
>
> 2. In view of the above, please note that the above said area will be taken over by the Department for handing over to NTECL/HPCL as soon as the NTECL/HPCL confirms that they have paid the compensation to you."

4. Challenging these orders dated 03.05.2007 which have been passed by the Deputy Commissioner well before the expiry of the respective lease deeds, the present writ petitions.

5. The main grounds taken by the petitioners in these petitions are that:

a. the action of the Deputy Commissioner in terminating the lease deed well before its expiry is not legally sustainable;

b. as per the lease deed, the lease can be terminated only as per clause 1, clause 2 or clause 22 of the lease deed and the Deputy Commissioner cannot terminate lease deed in violation of these clauses;

c. either NTECL or HPCL cannot invite them for negotiations for payment of compensation as there is no privity of contract between them and it is only the Deputy Commissioner who can fix the compensation even assuming that he can take over their lands;

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6. The Deputy Commissioner has filed counter contending that:

a. the writ petitions are not maintainable since the lands in question have been approved for transfer to (i) NTPC and TNEB in the name of NTECL for the establishment of a 2 x 500 MW Thermal Power Plant and Hindustan Petroleum Corporation Limited for re-locating their existing Petrol Oil Lubricant (POL) Terminal from the congested area at Tondiarpet on market value basis fixed at Rs.9,14,760/- per acre and the impugned proceedings is only a notice communicating the decision and as such, there is no illegality in the said order, more particularly when the Government of India has granted approval of transfer in public interest;

b. the writ petitions are not maintainable even as per Clause 23 of the Lease Deeds which states that any question, dispute or difference should be referred only to the Salt Commissioner to the Government of India;

c. the petitioners, having participated in several rounds of negotiations for compensation, as admitted by them, pursuant to receipt of impugned orders, are estopped from challenging the impugned orders at this stage;

d. since the State of Tamil Nadu is facing acute power crisis due to industrial development and formation of new residential apartments/houses and also providing other power consuming units by industrialists and public, it has become necessary to increase the power generation to meet the requirements of power and accordingly, the Chief Engineer, Ennore Thermal Power Station, Tamil Nadu Electricity Board, by letter dated 28.11.2002, had sought permission for collection of soil samples in certain lands at Vallur Village and during the deliberations held between the Chief Minister of Tamil Nadu and the Union Minister for Power, Government of India, it has been decided to establish a new 2 x 500 MW Thermal Power Station at Ennore at an estimated cost of Rs.5,000 crores to overcome the acute power crisis in the State and the Government of India, taking into consideration the fact that the Southern Region of the country is expected to have substantial energy shortage of 13% and peak shortage of 21%, has accorded a top priority for commissioning the project during early 11th plan and has accorded mega status for the power project;

e. similarly, HPCL has come up with the request for transfer of Salt Department lands informing that their Petrol Oil Lubricant (POL) Terminal in Tondiarpet is located in a thickly populated area and is very congested and with the proposed development of new port at Ennore to decongest the existing Chennai Port and also to shift the handling of

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hazardous cargo away from the main city, the shifting of their existing terminal at Tondiarpet has become inevitable;

f. "Salt" is a Central subject in the Constitution of India and appears as item No.58 of the Union List of the VII Schedule and Salt Organisation, a Central Government Department presently functioning under the Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, New Delhi is the Regulatory Body having control over manufacture, supply and distribution of salt and the Salt Department owns vast extent of land in the coastal Districts of Tamil Nadu and has leased out the same for salt manufacture to private entrepreneurs.

g. there is no possibility of large number of workers being employed by the petitioners and huge sums of money to the tune of Rs.7 lakhs being invested by them inasmuch as the affidavits in most of the writ petitions are drafted in the same manner as done in one W.P. No.20679 of 2007, without taking into consideration the basic facts about the extent of land held by the each of the petitioners;

h. the petitioners have not shown due diligence in salt manufacture from the very commencement of the lease period and consequently, leases granted to the petitioners were determined by this respondent on 01.05.2003 for non-payment of Government dues and non-working of the holdings during the years 2001 and 2002 and however, a lenient view was taken and determination order was revoked on 16.10.2003 after the payment of pending Government dues by the petitioners and assurances given by them to work the holdings and even those assurances have not been kept up by them;

i. the issue of the communication dated 03.05.2007 by the Deputy Commissioner has become a legal requirement in view of the transfer of the Salt Department lands covered under various leases to NTECL & HPCL by the Government of India and as such, there is no illegality in the same, especially when the Government of India had ordered transfer of lands only in national and public interest;

j. in terms of the order passed by the Deputy Commissioner, only NTECL/HPCL is liable to pay the compensation for extinguishment of leasehold rights by the petitioners and not the Deputy Commissioner and as such, the petitioners cannot contend that NTECL/HPCL cannot call them for the purpose of payment of compensation;

k. the question of privity of contract does not arise in this case since the lease deeds do not speak of any compensation for premature termination of lease and that too, when the Government of India, taking into consideration the fact that the lands are required in public and national

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interest, has passed orders to the effect that the lessees have to be compensated by NTECL/HPCL;

l. even earlier, this procedure of transfer of land has been followed without any hitch when the Salt Department lands located at Attiput (North / Voyalur / Thillai) were transferred to TIDCO during the year 1999 for establishment of Petro Chemical Industrial Park at Ennore; and

in such circumstances, the communication dated 03.05.2007 to all the lease holders of Vallur Salt Factory about taking over of the lands leased to them for salt manufacture is in no way infirmed and does not call for any interference by this Court and the mandamus as sought by the petitioner need not be granted.

7. Heard Mr. R. Subramanian, learned Senior Counsel and Mr. V. Sairam, learned counsels for the petitioners and Mr. V.T. Gopalan, learned Additional Solicitor General of India for the Union of India and the Office of the Salt Commissioner, Mr. S. Vijayakumar learned Senior Central Government Standing Counsel appearing for NTECL and Mr. O.R. Santhanakrishnan, learned counsel for HPCL.

8. Learned counsels for the petitioners, at the threshold, have contended that while admittedly, the lease deeds have not expired, the Deputy Commissioner cannot take over the leased out lands from the petitioners without terminating the lease as per the terms of the lease deeds. Questioning the action of NTECL / HPCL in calling the petitioners for negotiations for payment of compensation, the learned counsels for the petitioners have vehemently contended that they do not have locus standi to invite the petitioners for negotiations for the reasons that there is neither privity of contract between them and the petitioners nor they are the agents of the Deputy Commissioner. In other words, it is their strong contention that if at all the compensation has to be determined, it is only the Deputy Commissioner who has to fix it and not NTECL / HPCL and in view of these, the impugned orders call for interference by this Court and the mandamus as sought deserves to be granted.

9. In support of their arguments, the learned counsels for the petitioners have relied on:

i a decision of a learned Single Judge of this Court reported in CDJ 2007 MHC 1896 in the case of Subramania Reddy & others vs. The Deputy Salt Commissioner, Chennai and another: (para 4)

"First respondent filed counter affidavit wherein it is stated that since the petitioners have breached the lease deed condition No.22 and defaulted in payment of rent, the respective lease was cancelled. Petitioners' application for reconsideration were pending. The Government of India, Ministry of Industries (Department of Industrial Policy and Promotion) by communication dated 6.1.1999 addressed to the Salt Commissioner, Jaipur, conveyed the approval of the Government of India to the transfer of Salt Department land measuring 1434 Hectares to the Government of Tamil Nadu/TIDCO Ltd., for establishment of Petro

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Chemical Industrial Part at Ennore near Chennai including the lands leased out to the petitioners herein. Letters were also issued to various sale licensees of the Salt Department as well as to the second respondent on 29.1.1999 mentioning the licence numbers and stated that the above said lands could be taken over by he department for handing over to TIDCO as soon as TIDCO confirms that they had paid the compensation to all licensees. The second respondent thereafter wrote letters to the petitioners and requested the petitioners to come to TIDCO office on 30.3.1999 and determined the amount of compensation payable to each of the petitioners and therefore the decision of the first respondent was accepted and acted upon by the second respondent and only a formality of accepting the compensation and effectuating the transfer by handing over possession remain. It is submitted in the counter affidavit that in spite of cancellation of lease, the leasehold lands were to be handed over only after receipt of compensation and it could not matter whether there was any lease subsisting or to be cancelled. It is further stated that cancellation of lease granted in favour of the petitioners are not relevant to the issue for the payment of compensation and cannot be taken advantage of by the TIDCO to withhold the compensation to the petitioners. It is again stated in the counter affidavit that the Government of India in its order dated 6.1.1999 imposed condition, particularly condition No.3 and stated that the State Government/TIDCO shall pay compensation to the lessees for extinguishing the leasehold rights, which TIDCO and lessees may arrive at their mutual negotiations and the legal case arising out of the transfer should also be taken care of and defended by the TIDCO/State Government at their costs. Citing the said order, the first respondent states that the Salt Department should not be dragged on for payment of compensation and TIDCO also agreed through its letter dated 4.11.1999 to comply with the condition mentioned above. The second respondent also is bound to pay Rs.35,000/- per acre provisionally."

ii a Bombay High Court judgment reported in AIR 1979 Bombay 31 in the case of Kachrulal Hiralal Dhoot vs. The Gurudwara Board Nanded and others: (para 5)

"The question then arises, how is the amount of compensation of Rs.17,000/- to be apportioned between Gurudwara and Kachrulal. It is not disputed in view of the finding given by the trial Court that the only right of Gurudwara was to receive every year a sum of Rs.5.50 being double the amount of land revenue in respect of this survey number. Since the plea as to adverse possession has been given up, it is unnecessary for us to consider whether such payment was being made regularly from time to time by Kachrulal and his ancestors. If the right of Gurudwara is only to receive annually a sum of Rs.5.50, then naturally upon acquisition of the property including their interest in the land, namely, survey No.41, their right will be to receive the amount which can be arrived at upon capitalisation of twenty years' income. Either on the footing that Kachrulal and his ancestors are permanent

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licensees or permanent tenants in a period of twenty years the only amount which Gurudwara could have got from them would have been Rs.5.50 x 20 i.e. Rs.110/-. Thus, the amount of compensation of Rs.17,000/- has to be apportioned between Gurudwara and Kachrulal in such a manner that Gurudwara will be entitled to only Rs.110/- and the rest of the amount of compensation shall have to be paid to Kachrulal."

iii a Division Bench judgment of this Court reported in 1975 (11) MLJ 323 in the case of T. Durairajan vs. Sri Kasi Viswanathaswamy Temple (Tawker's Charities) represented by Trustees for the time being Sri T.R. Ramanatha Davey and T.R. Viswanatha Davey at No.36, Ekambareswarar Agraharam, Park Town, Madras – 3 (para 12):

"The next contention of the counsel on either side based on the alternative relief to which either of them would be entitled, thus gains prominence in the instant case. We may at the outset reiterate our earlier dissent on the extreme contention of Mr. T.R. Ramachandran that the interest of the second claimant should be deemed to be a permanent interest and that therefore the entire compensation should be invested and the second claimant be entitled to the income therefrom subject only to the liability to pay the agreed rent to the Charities. In the various decisions cited by Mr. T.R. Ramachandran, which concern themselves with permanent leases or statutory tenants, compensation has been fixed by Courts in varied proportions ranging from one-third to the tenant and two-thirds to the landlord or three-fifths to the tenant and two-fifths to the landlord, ten annas to the tenant and six annas to the landlord, etc. In Shama Prosunna Bose Mozumdar v. Brakoda Sundari Dasi, the Court said:

> "In apportioning compensation money between landlord and a tenant, the principle to be followed is to ascertain first the amount of rent payable to the landlord and capitalise that rent at so many years' purchase, then to put a money value upon the chance (if there be any) of an enhancement of the existing rent. These two sums the landlord is entitled to get and the tenant is entitled to get the balance."

. . . In the case under consideration, we are concerned with a lease for a fixed term, may be for an extended period beyond sixty years. Under the lease the first claimant is entitled to purchase the buildings after the expiry of the period of sixty years from the sub-lessees of the land. . . "

iv a judgment of the Supreme Court reported in (1996) 8 SCC 664 in the case of Mangatram and others vs. State of Haryana and others (para 7)

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"As regards apportionment of the compensation, the High Court has directed to pay 1/4 to the tenant and 3/4 to the Wakf Board. In view of the judgment in Col. Sir Harinder Singh Brar Bans Bahadur v. Bihari Lal and Inder Parshad v. Union of India, the tenants are entitled to 3/4 of the compensation while the landlord is entitled to 1/4 of the compensation. In view of the above law, the order of the High Court in appeals arising from reference under Section 30 is modified to the extent that appellants/tenants Mangat Ram and others are entitled to 3/4th while the Wakf Board is entitled to 1/4th of the compensation amount. The amount awarded in the judgment of the Single Judge under Section 23 (1-A) also requires to be apportioned accordingly."

v another judgment of the Supreme Court reported in (2004) 12 SCC 327 in the matter of State of Jammu and Kashmir vs. Ghulam Mohd. Dar and another (para 3)

"It is not disputed that the contract agreement entered into by and between the parties contains an arbitration agreement. Furthermore, the respondent herein filed the aforementioned writ petition for enforcing a contract qua contract. Although an objection has been taken as regards the maintainability of the writ petition by the appellant herein, the same unfortunately has not been considered by the High Court. It is well settled that writ of or in the nature of mandamus would not ordinarily issue for enforcing the terms and conditions of a contract qua contract. A writ of mandamus would issue when a question involving public law character arises for consideration. It is also well settled that the High Court would not entertain a writ petition involving disputed questions of fact. Keeping in view the aforementioned well-settled principles of law, the impugned judgments cannot be sustained. They are set aside accordingly. The appeal is allowed. However, the parties appearing before us proposed that Justice R.P. Sethi, a former Judge of this Court be appointed as a sole arbitrator in terms of the arbitration agreement. Accordingly, we request Justice R.P. Sethi to act as the sole arbitrator. Learned counsel appearing for the parties also submitted that no plea as regards limitation would be raised before the learned arbitrator. The parties would be at liberty to approach Justice R.P. Sethi for the aforementioned purpose. The remuneration payable to the arbitrator shall be decided by the arbitrator himself. We may make it clear that the fees payable to the learned arbitrator would be decided by him and the award, if any, would be filed before the High Court."

vi yet another judgment of the Supreme Court reported in AIR 1997 SC 2669 in the case of Union of India and others v. A. Ajit Singh (paras 7, 8 and 9)

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"7. The next question is to what proportion the landlord and the tenant are entitled to vis-à-vis the compensation. Though the appellant had terminated the tenancy, on appeal, it was restored. Thereafter, they remained in possession as tenant. The appellant initiated the acquisition under the Land Acquisition Act, though the covenant in the lease deed provided the right of dispossession and for taking possession for public purpose. In view of the fact that the order became final and the possession was not taken, pursuant to the termination of the tenancy, and since the acquisition was initiated under the Act, the respondent is entitled to the payment of the compensation. The right of tenancy is a right under which a tenant is entitled to enjoy the possessory title and enjoyment of the leased land subject to covenants relating to ejection after due determination of tenancy. It is seen that the lease was granted in 1949 and it was terminated in 1960 and the acquisition was initiated in 1967 on which date he continued to be in possession of the property; therefore, this Court has to consider the apportionment of the compensation on that basis. The judgment in Mangat Ram v. State of Haryana relates to the commercial premises which was acquired by the Government and the apportionment of the compensation was made at 75% and 25% to the tenant and the landlord respectively. It was challenged by the landlord for full payment. In that perspective, this Court upheld the grant of the apportionment at 75% and 25% to the tenant and the landlord respectively.

8. The case of Inder Parshad v. Union of India relates to the acquisition of the nazul land in respect of which lease was granted for 99 years to the tenant. On reference under Section 30, the Reference Court had apportioned the compensation @ 2/3rd and 1/3rd to tenant and landlord respectively. That order was modified on appeal by the High Court at 75% and 25% respectively. The State did not file any appeal; the tenant claimed the entire compensation in the appeal. This Court upheld the determination at 75% and 25% between the tenant and the landlord respectively.

9. In Col. Sir Harinder Singh Brar Bans Bahadur v. Bihari Lal, since under the Tenancy Act, the tenant is entitled to the entire land, this Court held that the tenant is entitled to the total compensation and the landlord is not entitled to any compensation. In view of the fact that the appellant is challenging the apportionment, we think that 60% of the compensation to the tenant would be justified. The Court is required to take into consideration relevant factors, viz., the duration of the lease, the nature of the right to enjoyment of the leasehold interest and the improvements the tenant made on the land etc. It is equally settled law that if the Government is the owner of the land, before initiating the acquisition, it is entitled to terminate the lease and take possession of the

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lands in terms of the lease. Necessarily, in the above case the tenant cannot have any right to compensation as he is bound by the terms of the lease. In a case where the Government, in spite of the covenant contained in the sale deed, chooses to acquire the land, necessarily the tenancy right of a tenant is required to be assessed and the compensation has to be awarded suitably. In view of the fact that the lease is for 99 years and the part of the lease has been enjoyed for a period of 18 years, we think that the apportionment of the compensation in the ratio of 60% to the tenant and 40% to the landlord would be a reasonable ratio and payment should accordingly be made. "

10. The learned counsels for the respondents, per contra, have contended that based on the specific request for Salt Department lands by TNEB and HPCL, the stand taken by the Government of India in approving transfer of lands to NTECL and HPCL, bearing in mind the public and national interest prevailing over the interest of the individual petitioners, cannot be found fault with and so also the impugned orders of the Deputy Commissioner which have been passed based on the approval of the Government of India to transfer the leased out lands to NTECL / HPCL. In this regard, it is also their strong contention that the Deputy Commissioner cannot do away with the passing of impugned orders in view of the fact that the Government of India had already approved the request made by NTECL / HPCL for transfer of Salt Department lands in their favour and the impugned order dated 03.05.2007 is only an extension of the orders of the Government of India.

11. Countering the contention put forward by the learned counsel for the petitioners that neither NTECL / HPCL has locus standi to call the petitioners for negotiations for determining the amount of compensation and that it is only the Deputy Commissioner who is liable to compensate the petitioners, the learned counsels for the respondents have contended that since the Government of India had ordered transfer of Salt Department lands to NTECL / HPCL, the lease deeds entered into by the petitioners stand automatically terminated and the extinguishment of leasehold rights by the petitioners is the only activity which remains to be completed by accepting compensation from NTECL / HPCL in the process of transfer. In reply to the point raised by the learned counsels for the petitioners that there is no privity of contract between the petitioners and NTECL / HPCL, the learned counsels for the respondents have argued that even where compensation is payable under the proceedings initiated under the Land Acquisition Act, the requisitioning body is a party to the award proceedings before the Civil Court and as such, the question of privity of contract does not arise. In this regard, it has been brought to the notice of this Court that this transfer of Salt Department lands is not done for the first time as in an earlier occasion in 1999, the Salt Department lands located at Attiput had been transferred to the Tamil Nadu Industrial Development Corporation (TIDCO) without any hassle.

12. Having heedfully considered the arguments advanced by the learned counsel for the parties to the writ petitions and also the judgments relied on by the learned counsel for the petitioners, the

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points to be answered while deciding these writ petitions which are filed seeking two different prayers are:

> i. whether the writ petitions are maintainable in the light of Clause 23 of lease deeds entered into by the petitioners which provides for arbitration in the event of any question, dispute or difference between these parties? and
>
> ii. whether there is impugnity in the order dated 03.05.2007 passed by the Deputy Commissioner?

13. First, let me deal with the batch of writ petitions in which the prayer is to quash the impugned order dated 03.05.2007 passed by the Deputy Commissioner.

14. Before dealing with the above, it has to be noted that "Salt" is a Central subject in the Constitution of India and appears as item No.58 of the Union List of the VII Schedule and Salt Organisation, a Central Government Department presently functioning under the Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, New Delhi is the Regulatory Body having control over manufacture, supply and distribution of salt and the Salt Department owns vast extent of land in the coastal Districts of Tamil Nadu and has leased out the same for salt manufacture to private entrepreneurs.

15. While answering the first point for consideration, it may be relevant to refer the Clause 23 of the Lease Deed which runs as under:

> "In the event of any question, dispute or difference arising in respect of or in connection with this indenture (except as to any matters, the decision of which is specially provided for by these presents), the same shall be referred to the sole arbitration of the Salt Commissioner to the Government of India or of some other person appointed by him. It will be no objection that the arbitrator is a Government servant, that he has to deal with matters to which these presents relate or that in the course of his duties as a Government servant, he has expressed views on all or any of the matters in dispute or difference. The award of the arbitrator shall be final and binding on the parties to this indenture. It is a term of this clause that no person other than the Salt Commissioner, Government of India or the person appointed by him should act as arbitrator and that, if for any reason, that is not possible, the matter shall not be referred to arbitration at all. The arbitrator may, with the consent of the parties, enlarge the time from time to time for making and publishing the award. Subject as aforesaid, the Arbitration Act, 1940 and the rules thereunder and any statutory modification thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this Clause."

16. From a reading of the above clause, it is crystal clear that the petitioners should have approached only the Sole Abitrator and ought not to have moved this Court by filing these writ petitions and no reason

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whatsoever has been assigned either in the affidavit or in the submissions made by the learned counsel for the petitioners for approaching this Court instead moving the arbitrator. In that view of the matter, I am of the considered view that these petitions which lack jurisdiction cannot be maintained and thus, the first point for consideration is answered accordingly.

17. Coming to the second point for consideration, admittedly, the Salt Department lands measuring several acres have been leased out to the petitioners for the purpose of manufacturing salt, who in turn, have invested certain sums of money and manufactured salt by engaging requisite labour. It is also an admitted fact that none of the lease deeds entered into by the petitioners have expired. Yet, as already stated, the Government of India had approved transfer of leased out lands to NTECL / HPCL well before the expiry of lease period based on which the Deputy Commissioner had passed the orders impugned in these writ petitions proposing to take over the leased out lands from the petitioners on payment of compensation by NTECL / HPCL to them. It is not that the Government of India is not seized of the fact that the lease deeds have not expired. Knowing fully well that the lease deeds have not expired, the Government of India had accorded its approval for transfer of leased out lands to NTECL / HPCL and the reason assigned by the Salt Commissioner is that only after thoroughly examining the overall situation, the Government of India had ordered transfer of lands, placing the public and national interest above the interest of the individual petitioners.

18. As far as the judgments relied on by the learned counsel for the petitioners are concerned, I am of the view that they all relate to the aspect of payment / apportionment of quantum of compensation which is also a point to be raised before the Sole Arbitrator as per Clause 23 of the Lease Deeds. The reliance made by the learned Senior Counsel on certain judgments as extracted above will be of any help to him only when the prayer in the writ petitions is in respect of compensation and when that is not the case here, where, only the order dated 03.05.2007 passed by the Deputy Commissioner, based on the orders dated 09.04.2007 and 27.04.2007 passed by the Ministry of Industry and Commerce, Department of Industrial Policy and Promotion, New Delhi, is challenged, it has to be concluded that his reliance would not be in support of his arguments.

19. As rightly pointed out in the counter, by virtue of the transfer of the Salt Department lands to NTECL/HPCL ordered by the Government of India in the public and national interest, all leases granted stand terminated and the only activity remaining is that the lessees should extinguish their leasehold rights by receiving compensation amount payable to them. In terms of the orders dated 09.04.2007 and 27.04.2007 passed by the Government of India, NTECL/HPCL is liable to pay compensation to the petitioners and even in cases where compensation is paid under the proceedings initiated under the Land Acquisition Act, the requisitioning body is a party to the award proceedings and even when the matters are taken up before the Civil Court on reference for enhancement. As such, the question of privity of contract does not arise in this case and the contention of the petitioners that NTECL / HPCL cannot compensate them does not hold good.

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20. Further, it is to be noted that the petitioners have filed this batch of writ petitions challenging the order of the Deputy Commissioner which is solely based on the orders of the Government of India dated 09.04.2007 and 27.04.2007 passed with a view to promote industrial growth particularly to meet the requirements of the energy sector and to cater to the needs of the general public. In other words, it can be seen that the Government of India, by its above two orders, has taken a policy decision to transfer the lands belonging to the Salt Department to NTECL / HPCL and these orders of the Government of India are not challenged before this Court. However, as already stated, only the consequential order passed by the Deputy Commissioner on 03.05.2007 is challenged in these writ petitions. Even in the impugned order, it has been categorically stated the petitioners lands are to be taken over only on payment of compensation by NTECL/HPCL which may be decided by mutual negotiations and accordingly, the petitioners have also been called for negotiations pursuant to which six rounds of negotiations have been held and the relevant correspondence in this regard has been enclosed in the typed-set of papers. Thus, it is clear that the process of arriving at a proper and reasonable compensation is still under progress and the same is not yet over and even before the completion of this process, the present writ petitions have been filed. Here again, it is to be noted that this issue of payment of compensation is one such point which has to be raised only before the Sole Arbitrator as per Clause 23 of the lease deeds entered into by the petitioners or before any Civil Court on a reference made and as such, this Court is not the correct forum to decide this aspect.

21. In this connection, it needs to be stated here that the Government of India had not suo motu approved transfer of lands to NTECL / HPCL. The background of such a stand taken by the Government of India is the requests made by TNEB and HPCL for transfer of Salt Department lands. Firstly, it is seen from the counter of the Deputy Commissioner that acute power crisis faced by the State due to industrial development and also mushrooming of new residential apartments have necessitated and pushed the State to generate more power to meet the power requirement and accordingly, as a result of the deliberations between the Chief Minister of Tamil Nadu and the Union Minister for Power of the Government of India, it has been decided to establish new 2 x 500 MW Thermal Power Station at Ennore and this project known as "NTECL" has been established by the National Thermal Power Corporation and the Tamil Nadu Electricity Board as a joint venture. Similarly, it is also seen from the counter affidavit that HPCL had requested the Government of India for transfer of Salt Department lands so as to decongest its existing Petrol Oil Lubricant Terminal in Tondiarpet which is a thickly populated area and also to decongest the existing Chennai Port and to shift the handling of hazardous cargo in Salt Department lands where human dwelling is minimal. While this being the background, the Government of India had accorded its approval for transfer of lands to NTECL / HPCL though seized of the fact that the lease deeds are very much alive.

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22. In this context, some useful reference could be made to:

i. a judgment of the Supreme Court reported in (2006) 4 SCC 683 in the matter of State of Karnataka & another vs. All India Manufacturers Organisation and others in which it was held in paragraph 81 as under:

> ". . . The powers under the KIAD Act represent the powers of eminent domain vested in the State, which may need to be exercised even to the detriment of individuals' property rights so long as it achieves a larger public purpose."

ii. another judgment of the Supreme Court reported in (2007) 1 SCC 641 in the case of Daulat Singh Surana and others vs. First Land Acquisition Collector and others wherein it was held in para 75 as under:

> "The concept of "eminent domain" is an essential attribute of every State. This concept is based on the fundamental principle that the interest and claim of the whole community is always superior to the interest of an individual."

23. A plain reading of the two judgments of the Supreme Court referred to above, law becomes settled interest of public at large will have to be given top priority when compared to interest of a few individuals.

24. It is also seen from the Deputy Commissioner's counter affidavit that in an earlier occasion, the Salt Department lands which were leased out had been transferred to TIDCO without any hassle and this is not controverted by the petitioners. Further, when the Government of India had specifically ordered that transfer of lands is only subject to payment of compensation by NTECL / HPCL to be arrived at by mutual negotiations, the petitioners are estopped from harping on the point that it is only the Deputy Commissioner who has to make good their loss and not NTECL / HPCL. This is because, so long as the petitioners' receiving compensation is ensured by the Government of India, it does not at all matter for them whether it is NTECL / HPCL / the Deputy Commissioner by whom their loss is made good. In fact, though there is no clause in the lease deed to the effect that lessees should be compensated in case of premature termination of lease deed, the Government, by taking due note of the livelihood of the petitioners, has ordered that they have to be compensated in lieu of their extinguishing their leasehold rights.

25. Last but not the least, though the area leased out to the petitioners varies significantly, the petitioners have uniformly averred in their respective affidavits that they have spent about Rs.7 lakhs to the leased out lands for manufacturing salt and have also engaged more than one hundred persons for this purpose and prima facie, this appears to be too big a pill to swallow. Accordingly, the second point for

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consideration also is answered favouring the respondents. Thus, on this score also, the writ petitions are liable to be dismissed.

26. Coming to W.P. No.21128 of 2007 which is filed seeking a mandamus forbearing the Deputy Commissioner from dispossessing the petitioners from their respective manufacturing lands leased out to them, it is seen that the petitioners are lessees in respect of the Salt Department lands and the validity of their respective lease deeds is from 01.01.1988 to 31.12.2007 except the lease deed of the third petitioner which expires on 24.05.2020 and as such, all the petitioners are governed by their respective lease deeds.

27. A bare reading of Clause 23 of the lease deed makes it clear that any question, dispute or difference arising in respect of or in connection with the indenture (except as to any matters, the decision of which is specially provided for by these presents), the same shall be referred to the sole arbitration of the Salt Commissioner to the Government of India or of some other person appointed by him and the arbitrator may, with the consent of the parties, enlarge the time from time to time for making and publishing the award.

28. In the instant case, the Deputy Commissioner has passed an order dated 03.05.2007 proposing to take over the land and transfer the same to NTECL / HPCL and in the said order, the petitioners have been asked to hand over possession subject to payment of compensation. At this stage, it is to be noted that it is only the apprehension of the petitioners that they are going to be dispossessed by the respondents. It is specifically stated in the order dated 03.05.2007 that the lands would be taken over subject to payment of compensation which NTECL / HPCL may arrive at through mutual negotiations with the petitioners and only after their confirmation that they have compensated the petitioners. Pursuant to the order dated 03.05.2007, the petitioners have also participated in negotiations with NTECL/ HPCL. At this stage, their apprehension of dispossession can very well be redressed by the Deputy Commissioner or by the Sole Arbitrator as per Clause 23 of the lease deed and particularly in the absence of any challenge to the order dated 03.05.2007, it is only the Deputy Commissioner or the Sole Arbitrator who is the competent authority to redress the petitioners' grievance. In that view of the matter, the relief as sought in this writ petition cannot be granted by this Court under Article 226 of the Constitution of India as the writ petition itself is not maintainable in view of specific clause in the lease deed i.e. Clause 23 which is the Arbitration clause.

29. In view of the afore-said discussion, particularly the fact that the Government of India, while approving transfer of leased out lands, had borne in mind the public and national interest as a whole when compared to the petitioners' individual interest which is in accordance with the ruling of the Supreme Court in All India Manufacturers Association case and Daulat Singh Surana case referred to above and had also not left the petitioners' livelihood at stake by ordering compensation to be paid by NTECL / HPCL and the passing of the impugned orders by the Deputy Commissioner is only an extension of the stand of the Government of India in approving transfer of lands to NTECL / HPCL, I find no legal infirmity with the orders impugned in the first batch of

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writ petitions and they are accordingly upheld and as such, the writ petitions are dismissed.

30. Similarly, in case of W.P. No.21128 of 2007 also wherein a mandamus as stated above is sought, this Court is not able to find any merit and in that view of the matter, the said writ petition is also dismissed.

31. However, the petitioners are at liberty to:

a. approach the Deputy Commissioner towards redressal of their grievances by explaining their rights, including, compensation under the lease deed, within a period of two weeks from the date of receipt of a copy of this order and thus, being approached by the petitioners, the Deputy Commissioner may consider their case in accordance with law and on merits within a period of four weeks; or

b. in the alternative, the petitioners may invoke Clause 23 of their lease deed and move the Sole Arbitrator to work out their remedy in respect of their rights including compensation, within a period of two weeks from the date of receipt of a copy of this order.

It is made clear that the time taken by the petitioners in moving this Court need not be taken into account for the purpose of limitation.

Resultantly, all the above writ petitions are dismissed with the directions as aforesaid. No costs. Consequently, connected Miscellaneous Petitions are closed.

cad

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1 The Union of India
Secretary to Ministry of Industry and Commerce
Department of Industrial Policy and Promotion
New Delhi

2 The Deputy Salt Commissioner
Office of the Deputy Salt Commissioner
Chennai - 600 006

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+1 cc to Mr.T.S.Sivagnanam, Advocate Sr.No.69919.

+1 cc to Mr.S.Vijayakumar, Advocate Sr.No.69903.

+1 cc to Mr.O.R.Santhana Krishnan, Advocate Sr.No.69853.

+1 cc to Mr.V.Sairam, Advocate Sr.No.69792.

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